IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 26363 of 2003(L)

PETITIONER:

PAILY KURIAKO, KURUVICHIRANGARA,
KAITHAKKADUKARA, PATTIMATTOM VILLAGE.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENTS:

PAILY ABRAHAM, KURUVICHIRANGARA,
KAITHAKKADUKARA, PATTIMATTOM VILLAGE.

BY ADV. SRI.P.SATHISAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:-

EXT.P1 PHOTOCOPY OF THE REPORT AND SKETCH SUBMITTED BY ADVOCATE SRI.TONNY BONIFAS DATED 3-5-2000.

EXT.P2 PHOTOCOPY OF IA. NO. 1429/01 IN OS. NO.57/97 MUNSIFF COURT, PERUMBAVOOR.

EXT.P3 PHOTOCOPY OF THE OBJECTION DT. 5-11-01 FILED IN IA. NO.1429/01 IN OS. NO.57/97 MUNSIFF COURT, PERUMBAVOOR.

EXT.P4 PHOTOCOPY OF ORDER D. 7-4-03 IN IA. NO. 1429/01 IN OS.NO.57/97 MUNSIFF COURT, PERUMBAVOOR.

(TRUE COPY)

P.S. TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C)No. 26363 OF 2003

Dated this the 22nd day of June, 2007

J U D G M E N T

The defendant in a suit for identification and demarcation of plaint A and B schedule properties on the basis of documents of title and resurvey plan and for fixation of the boundaries between the two properties and for consequential injunction is the petitioner. He challenges in this writ petition under Article 227, Ext.P4 order of the learned Munsiff passed on an application filed by him for remitting back the commission report and the survey plan prepared on the basis of the measurement to the Commissioner. Serious counter was filed by the respondent plaintiff to the IA. (IA.1429/01) filed by the petitioner and the learned Munsiff has by the impugned order found that the Commissioner has reported all relevant matters which were ascertained by him and that the survey plan also is not vitiated by any mistake. I have heard the submissions of Sri.Dinesh R.Shenoy, learned counsel for the petitioner and also those of Sri.P.Satheesan, learned counsel for the respondents. According to Mr.Shenoi it is not possible to locate the properties and fix the boundaries correctly without check line measurement from the main theodolite stones on the basis of re-survey plan and the properties cannot be located on

the basis of individual survey stones fixed on the boundaries of the properties of individual property owners is liable to be wrong since it is always possible that individual property owners manipulate the position of the individual survey stones. Counsel referred to the contention in the written statement, i.e., survey stones found in the vicinity had been tampered with by the respondent plaintiff just before the filing of the suit to manipulate the facts to suit his case. Mr. Shenoi further submitted that the court below wrongly assumed that the petitioner had not requested the Commissioner or surveyor to conduct measurement on the basis of the original re-survey plan through check line measurements. In fact, in the commission application itself what is requested is proper measurement on the basis of the re-survey plan. The order passed by the court below in the original commission application is to conduct proper measurement on the basis of re-survey plan and the prayer in the work memo is for identification of the public pathway running along the eastern side of the plaint schedule properties with reference to the re-survey plans. The correct execution of the commission order and the work mentioned in the work memo are not possible only on the basis of one or two survey stones found planted at the corner of an individual plot. Any court which was anxious to resolve the issue in the suit correctly should have allowed the application filed by the petitioner rather than

dismissing it on technical reasons, so submitted by Mr.Shenoi. Sri. Satheesan, learned counsel for the respondent would try to sustain the order on the basis of the reasons stated by the learned Munsiff. Having considered the rival submissions addressed at the Bar I find merit in the submission of Mr.Shenoi that the correct and fool proof method for resolving the controversy which are to be relevant for deciding the suit correctly is check line measurement from the main theodolite stones is necessary. At the same time, I notice that there was laches on the part of the petitioner in bringing this aspect of the matter specifically to the notice of the court and the commissioner. Therefore I am inclined to set aside the impugned order and allow the I.A. filed by the petitioner only by putting the petitioner to terms. Accordingly the writ petition will stand allowed. Ext.P4 will stand set aside and the I.A. filed by the petitioner will stand allowed on condition that the petitioner pays to the respondent by way of cost a sum of Rs.1500/- within three weeks of his receiving a copy of this judgment. Failing payment of cost, Ext.P4 will stand confirmed and the writ petition will stand dismissed.

(PIUS C.KURIAKOSE, JUDGE)

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